



THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2009 SKCA 66

Date: 20090610

Between:

Docket: 1412

Northland Hotels Management Inc.

Appellant

- and -

City of Saskatoon and
Saskatchewan Assessment Management Agency

Respondents

Coram:

Sherstobitoff, Lane and Wilkinson JJ.A.

Counsel:

Leonard D. Andrychuk, Q.C. for the Appellant
William J. Davern for the Respondents

Appeal:

From: Saskatchewan Municipal Board
Assessment Appeals Committee

Heard: May 13, 2009

Disposition: Allowed

Written Reasons: June 10, 2009

By: The Honourable Mr. Justice Lane

In Concurrence: The Honourable Mr. Justice Sherstobitoff
The Honourable Madam Justice Wilkinson

Lane J.A.

[1] This appeal arises from the 2005 assessment of five hotel properties located in the City of Saskatoon. The Assessment Appeals Committee of the Saskatchewan Municipal Board (the "Committee") made the same disposition for each of the five properties. Leave to appeal was granted pursuant to s. 33.1 of *The Municipal Board Act*¹ on the following question of law: Did the Committee err in its interpretation or application of Document Number 4.1.12 of the Saskatchewan Assessment Manual (the "Manual") when it determined that a condominium unit sale could be used in the determination of the market adjustment factor of non-condominium properties by the Sales Comparison Method? The appellant, Northland Hotels Management Inc., is the lead appeal.

[2] In the 2005 assessment each of the five hotel properties was subject to the application of a citywide hotel/motel Market Adjustment Factor ("MAF") of 0.53. That MAF was established using 4 sales identified during the relevant assessment cycle. Three of these sales were in the Central Business District and two of those three were full-service hotels being the Delta Bessborough and the Radisson Hotel Saskatoon. The Appellant contends the Assessor incorrectly included the Radisson Hotel Saskatoon in the MAF analysis and as a result overstated the applied MAF.

¹ S.S. 1988-89, c. M-23.2.

[3] The reason for the objection to the inclusion of the Radisson Hotel Saskatoon is that it is a single condominium unit, being part of a condominium development consisting of the hotel tower and a second tower consisting of apartment style residences. The hotel tower was sold in July, 1998 for \$18,750,000. Thus the fundamental issue is whether the Committee erred in including the sale of a condominium unit in the sales array of non-condominium property sales in order to calculate the MAF.

[4] Document Number 4.1.12 of the Manual contains the evaluation procedures for determining the market adjustment factor for the commercial buildings in issue. It sets out five different methods the assessor is to use in order to determine the market adjustment factor. The complete Document is set out later in the judgment.

[5] The Assessor used the Sales Comparison Method as described in the Document. The Appellant contends that Document requires the Condominium Unit Method be used to determine the MAF for the condominium.

[6] The Appellant contends that a correct reading of Document Number 4.1.12 does not permit the Assessor to combine condominium units and non-condominium units in determining the MAF. When a condominium is being assessed the Document requires that the Condominium Unit Method be used where there are sufficient improved condominium unit sales to establish a reliable market adjustment factor. As a result of there being only one sale, there are not "sufficient" improved condominium unit sales. The Document

recognizes that condominium title is a fundamentally different form of title from non-condominium title. The Document provides a calculation of the market ratio for an improved condominium unit sale which is different than the calculation for non-condominium sales. Condominium ownership is different from fee simple ownership and this is recognized throughout the Document.

[7] Further, the Appellant argues there is no provision in the Document which allows the Assessor to combine condominium unit sales and non-condominium unit sales. He is required to choose one of the methods set out in the Document and there is no provision which allows him to combine any of the five methods.

[8] If there are not sufficient improved condominium unit sales to establish a reliable market adjustment factor, the Assessor must default to the Comparable Neighbourhood Method and if the use of that method does not enable him to establish a reliable market adjustment factor, he must then use the Replacement Cost Method. He cannot default to the Sales Comparison Method which makes no reference to condominiums in that methodology.

[9] The Appellant argues the Respondent's position leads to an obvious inconsistency in that if there are sufficient condominium unit sales, the Condominium Unit Method must be used but if there is only one sale (*i.e.* insufficient sales) the Sales Comparison Method must be used.

[10] The Respondent maintains there is nothing in the Manual prohibiting the Assessor from combining comparable condominium and non-condominium properties in the same neighbourhood for MAF calculation purposes. In this case, the Condominium Unit Method could not be used because there were not "sufficient improved condominium unit sales to establish a reliable market adjustment factor," there being only the one sale of a condominium unit hotel in the relevant time frame.

[11] The Assessor argued the Sales Comparison Method must be used where there are sufficient improved property sales to establish a reliable MAF. The Sales Comparison Method makes no reference to the type of ownership. Each of the properties had similar buildings or structures and each was a hotel offering the same type of facilities. The only difference in methodology in the calculation of the two methods is the allocation of the value of the land and building to the individual condominium unit.

[12] The Respondent contends the issue is one of comparability. The property was comparable to the other properties in most respects including use, purposes, zoning, facilities, etc. The object of the assessment is to arrive at a fair value which is a comparative value as close to market value as possible. The sale of the condominium unit hotel was a strong indicator of market value and inclusion in the sales array made the MAF more reliable.

[13] The Respondent continues, the Assessor has the power to do what he did by virtue of his power to stratify established in Document Number 1.1.4, and the purpose of stratification is "to ensure that valuations reflect the sales

prices of properties with similar uses in the same geographic area."² The Assessor properly stratified the hotels together because the market treated them the same.

[14] Continuing, there is nothing in the Document which precludes the Assessor from doing what he did and he properly exercised his discretion to calculate the most reliable MAF. Comparability is a question of fact and as such is within the purview of the Committee.³

[15] The assessment was upheld by both the Board of Revision and the Assessment Appeals Committee.

[16] It is against this background I now set out Document Number 4.1.12:

Summary This section contains the valuation procedures for determining the market adjustment factor (MAF) for residential, commercial, and miscellaneous buildings and structures valued by the replacement cost method.

Formulas, Rules and Principles The market adjustment factor shall account for all normal economic obsolescence and any loss or gain in value of the building or structure due to any difference in replacement costs and any difference in the amount of physical deterioration or functional obsolescence, that have not been taken into account using the procedures in this manual.

The market adjustment factor shall be determined taking into consideration the present use, location, zoning, or any other circumstance affecting the value of the building or structure.

Market adjustment factor neighbourhoods shall be determined in accordance with the valuation procedures in Chapter 1 – Formulas, Rules and Principles, Section 1.1.4 – Rules of Assessment, Location.

The market adjustment factor shall be determined by the sales comparison method, condominium unit method, comparable neighbourhood method, replacement cost method, or mixed buildings and structures method.

² Document Number 1.1.4.

³ *Saskatoon (City) v. Condominium Plan 96S18384*, 2001 SKCA 92.

Sales Comparison Method The sales comparison method shall be used where there are sufficient improved property sales to establish a reliable market adjustment factor.

The market adjustment factor shall be determined by application of the following calculation procedure:

1. Identify improved properties with comparable buildings or structures that are arm's length sales.
2. Determine the market ratio for each improved property sale:
 - i. Determine the improved property sale price.
 - ii. Determine the fair value of the land in accordance with the procedures in Chapter 1 – Formulas, Rules and Principles, Section 1.2.1 – Land Valuation, Urban Land.
 - iii. Determine the replacement cost new less depreciation of the buildings or structures.
 - iv. Calculate the residual building value by subtracting the fair value of the land from the improved property sale price.
 - v. Calculate the market ratio by dividing the residual building value by the replacement cost new less depreciation.
3. Calculate the market adjustment factor for the comparable buildings and structures by selecting the median market ratio.
4. Test the accuracy of the market adjustment factor in accordance with the sale price analysis procedures in Chapter 1 – Formulas, Rules and Principles, Section 1.1.4 – Rules of Assessment, Location.

Condominium Unit Method The condominium unit method shall be used where there are sufficient improved condominium unit sales to establish a reliable market adjustment factor.

For condominium units, including bare land condominium units, the market adjustment factor shall be determined by application of the following calculation procedure:

1. Identify comparable improved condominium units that are arm's length sales.
2. When needed, determine the method of apportioning. Apportioning methods may be condominium unit factors, square feet, RCN or other units of comparison.
3. Determine the market ratio for each improved condominium unit sale:
 - i. Determine the fair value of the land associated with each improved condominium until sale:

- determine the fair value of the parcel of land in accordance with the procedures in Chapter 1 – Formulas, Rules and Principles, Section 1.2.1 – Land Valuation, Urban Land; and
 - calculate the fair value of the land associated with each improved condominium unit sale by apportioning the fair value of the parcel of land.
- ii. Determine the building residual sale price for each improved condominium unit sale:
- determine the improved condominium unit sale price; and
 - calculate the building residual value by subtracting the fair value of the land associated with the condominium unit from the improved condominium unit sale price.
- iii. Calculate the replacement cost new less depreciation (RCNLD) of each condominium unit:
- for condominium units where RCNLD procedures do not separate the RCNLD for all or a portion of the individual condominium units:
 - a. apportion the RCNLD of the condominium structure not separated by RCNLD procedures to each condominium unit;
 - b. for components of the condominium unit, that RCNLD procedures do separate the RCNLD, calculate the RCNLD for each condominium unit using the procedures in the manual; and
 - c. apportion the RCNLD of the common buildings and structures to each condominium unit; or
 - for condominium units where RCNLD procedures do separate individual condominium units and common buildings and structures:
 - a. calculate the RCNLD for each condominium unit using the procedures in the manual; and
 - b. apportion the RCNLD for the common buildings and structures to each condominium unit.
- iv. Calculate the market ratio by dividing the building residual sale price of the condominium unit by the replacement cost new less depreciation of the condominium unit.
4. Calculate the market adjustment factor for the condominium unit by selecting the median market ratio.

5. Test the accuracy of the market adjustment factor in accordance with the sale price analysis procedures in Chapter 1 – Formulas, Rules and Principles, Section 1.1.4 – Rules of Assessment, Location.

Comparable Neighbourhood Method The comparable neighbourhood method shall be used where improved property sales or improved condominium property sales are limited and there are sufficient improved property sales or improved condominium property sales in a comparable neighbourhood to establish a reliable market adjustment factor.

The market adjustment factor shall be determined by application of the direct comparison formula or ratio comparison formula.

Direct Comparison

The market adjustment factor for buildings and structures or improved condominium units by direct comparison shall be determined by application of the following formula:

$$MAF_{SUB} = MAF_{COMP}$$

where: MAF_{SUB} = market adjustment factor for buildings and structures or improved condominium units in the subject neighbourhood

MAF_{COMP} = market adjustment factor for buildings and structures or improved condominium units in the comparable neighbourhood

Ratio Comparison

The market adjustment factor for buildings and structures or improved condominium units by ratio comparison shall be determined by application of the following formula:

$$MAF_{SUB} = MAF_2 \times \frac{MAF_{COMP1}}{MAF_{COMP2}}$$

where: MAF_{SUB} = market adjustment factor for the subject buildings and structures or improved condominium units

MAF_2 = market adjustment factor for other buildings and structures or improved condominium units in the subject neighbourhood

MAF_{COMP1} = market adjustment factor for buildings and structures or improved condominium units comparable to the subject and located in the comparable neighbourhood

MAF_{COMP2} = market adjustment factor for buildings and structures or improved condominium units

comparable to the other buildings and structures or improved condominium units in the subject neighbourhood and located in the comparable neighbourhood

Replacement Cost Method The replacement cost method shall be used where there are insufficient improved property sales to establish a reliable market adjustment factor using the sales comparison method, condominium unit method, or comparable neighbourhood method.

The market adjustment factor shall be determined by application of the following calculation procedure:

1. Identify improved properties with comparable buildings or structures.
2. Determine the market ratio for each improved property:
 - i. Determine the replacement cost new of each building and structure in accordance with the trended original cost method in Chapter 4 – Improvements, Section 4.1.3 – General Rules, Replacement Cost New.
 - ii. Determine the replacement cost new of each building and structure in accordance with the comparative unit value method in Chapter 4 – Improvements, Section 4.1.3 – General Rules, Replacement Cost New.
 - iii. Calculate the market ratio by dividing the trended original cost by the comparative unit value replacement cost new.
3. Calculate the market adjustment factor for the comparable buildings and structures by selecting the median market ratio.

Mixed Buildings and Structures Method In cities that have chosen to use the residential sales comparison method, method 1 or method 2 shall be used if the non-residential portion is a mixed-use property.

Note: The Mixed Buildings and Structures Method does not apply to residential condominiums as each residential condominium is a separate property.

Method 1 or method 2 of the mixed buildings and structures method may be used where there are insufficient improved property sales to establish a single reliable market adjustment factor for the entire property using the sales comparison method, condominium unit method, comparable neighbourhood method, and there are insufficient trended original costs to establish a reliable market adjustment factor for the entire property using the replacement cost method.

Method 1

This method may be used where:

- two or more buildings or structures with different present uses are located on the same parcel of land; and

- there are sufficient improved property sales or improved condominium property sales or trended original costs in the subject neighbourhood or a comparable neighbourhood, to establish a reliable market adjustment factor for each of the present uses separately.

The market adjustment factor shall be determined by application of the following calculation procedure:

1. Identify improved properties that have sold with buildings or structures comparable to each of the present uses.
2. Determine the market adjustment factor for each present use in accordance with the sales comparison method, condominium unit method, comparable neighbourhood method and replacement cost method.
3. Apply the market adjustment factor calculated for each present use to the buildings and structures located on the mixed use parcel of land with the same present use.

Method 2

This method may be used where:

- two or more parts of a building or structure, located on the same parcel of land, have been classified as separate building groups;
- one building group does not predominate the property; and
- there are sufficient improved property sales or improved condominium property sales or trended original costs in the subject neighbourhood or a comparable neighbourhood, to establish a reliable market adjustment factor for buildings and structures comparable to each of the separate building groups.

The market adjustment factor shall be determined by application of the following calculation procedure:

1. Identify improved properties that have sold with buildings or structures comparable to each of the separate building groups.
2. Determine the market adjustment factor for each of the comparable buildings and structures in accordance with the sales comparison method, condominium unit method, or comparable neighbourhood method and replacement cost method.
3. Apply:
 - a) the market adjustment factor calculated for each of the comparable buildings or structures to the comparable building group of the subject building or structure; or

- b) the average of the market adjustment factors, calculated for each of the two most predominant comparable building or structure groups to all the building groups of the subject building or structure.

DECISION

[17] The appeal must be allowed. Document Number 4.1.12 clearly recognizes a distinction between condominium unit and non-condominium unit properties and establishes a separate methodology for the calculation of the MAF for condominium improvements. The Document states the market adjustment factor must be determined by either the Sales Comparison Method, the Condominium Unit Method, the Comparable Neighbourhood Method, the Replacement Cost Method, or the Mixed Buildings and Structures Method. There is no provision which allows the Assessor to combine or blend methods. He must select one of the methods. Although arguing there was nothing in the Manual to prevent the Assessor from doing what he did, counsel for the Respondent properly concedes there is nothing specifically in the Assessment Manual allowing the Assessor to do what he did.

[18] Clearly there is a distinction between condominium and non-condominium properties. Title is different, the methods of valuation are different and rights depend on the condominium plan not the title. The Document recognizes there is a difference and if the Assessor does not have sufficient improved condominium unit sales to establish a reliable MAF (as in this case), he is required to then move to the Comparable Neighbourhood Method. The Committee erred in allowing the assessment. The Radisson Hotel Saskatoon should not have been included in the sales array used to calculate the MAF for the other hotels. The MAF which would result for the

other hotels would not apply to the Radisson Hotel Saskatoon. The appeal is allowed with costs in the usual manner and the matter is referred to the Assessor to deal with the assessment in accordance with the Manual.

DATED at the City of Regina, in the Province of Saskatchewan, this 10th day of June, A.D. 2009.

"LANE J.A."

LANE J.A.

I concur

"SHERSTOBITOFF J.A."

SHERSTOBITOFF J.A.

I concur

"WILKINSON J.A."

WILKINSON J.A.